

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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**PLAINTIFF DEMANDS TRIAL BY JURY**

PROMENET, INC.,

Plaintiff,

Docket No.

**COMPLAINT**

-against-

Forexware, LLC,

Defendant.

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Promenet, Inc., plaintiff, through its legal counsel, Gregory A. Sioris, Esq., complains of the defendant as follows:

**NATURE OF THE COMPLAINT**

1. Plaintiff sues for \$109,417.40 which remains unpaid from five invoices for software plaintiff licensed to defendant during 2023 and 2024. Despite defendant seeking and accepting the software it refuses to pay for it, despite due demand.

**JURISDICTION AND VENUE**

2. Plaintiff is an authorized seller of copyrighted software as will is referenced herein and has the right to bring suit for collection of the license fees for software that defendant sought and agreed to pay for. This Court has jurisdiction based on 28 U.S.C. §1332 and the common law of the State of New York.

3. Venue is properly placed in the Southern District of New York under 28 U.S.C. §1391 since a substantial part of the complained of acts and omissions have occurred within New York County.

**BACKGROUND OF THE DISPUTE**

4. Plaintiff asserts claims against the defendant for breach of contract, accounts stated, unjust enrichment and for its reasonable legal fees to prosecute this suit based on the agreement the parties

entered into and defendant's failure to pay plaintiff for its ongoing use of computer cyber security software sold under the trade names *Darktrace* and *Veeam Data Advanced* as it agreed to on December 21, 2023 after receipt and review of plaintiff's sales agreement, through defendant's representative and authorized buying agent, Andrew Wheeler.

### **FACTS OF THE DISPUTE**

5. Plaintiff is a New York corporation which conducts its business through its headquarters at 42 Broadway in Manhattan. Plaintiff trades in selling computer hardware, licensing computer software and performing services for its customers related to creating and maintaining computer data systems throughout the East Coast of the United States.

6. Defendant Forexware, LLC, is a limited liability company registered in Delaware whose headquarters and principal place of business is in Jersey City, NJ but is also licensed to do business in New York State. Upon information and belief the member(s) of the defendant are domiciled in States other than New York.

7. Plaintiff, through its vice president of sales Nicholas Sidoti, on or about December 2023 negotiated with defendant's Andrew Wheeler regarding the licensing of *Darktrace* cyber-security software. Pursuant to agreement dated July 24, 2017 plaintiff is an authorized licensed reseller of *Darktrace* software whose rights under copyright are owned by its author, an entity known as *Darktrace Limited*.

8. Pursuant to a quote provided to defendant by plaintiff, dated December 7, 2023, plaintiff proposed a two year contract for several *Darktrace* software products for a network of 1,200 computer devices at \$242,767.30. Plaintiff's Nicholas Sidoti forwarded two emails to defendant on December 21, 2023 regarding whether defendant had accepted the quote. Defendant's Andrew Wheeler responded twice by email on December 21, 2023, at 12:26 pm and 1:56 pm approving the sales quote and the plaintiff's Terms and Conditions of sale as the Terms and Conditions were

attached as a separate document to this email. Based on this assent and approval of the price and the terms of sale by defendant plaintiff licensed and furnished the Darktrace software to defendant to use.

**THE SOFTWARE PROVIDED TO DEFENDANT WHICH IT REFUSES TO PAY FOR**

9. On December 1, 2023 defendant was billed \$26,171.17 pursuant to plaintiff invoice 82654 to renew a software subscription license for Veeam Data Advanced software which it used and uses to the date of the complaint. The defendant has failed to pay this invoice either in whole or in part as of the date below as recited in this complaint.

10. On December 21, 2023 plaintiff billed defendant \$15,938.52 pursuant to plaintiff invoice 82730 for defendant's continued use of Veeam Data Advanced software to December 27, 2024. The defendant has failed to pay this invoice either in whole or in part as of the date below as recited in this complaint.

11. On February 6, 2024 plaintiff billed defendant \$2,594.99 pursuant to plaintiff invoice 83006 for defendant's continued use of Darktrace software. The defendant has failed to pay this invoice either in whole or in part as of the date below as recited in this complaint.

12. On February 6, 2024 plaintiff billed defendant \$32,356.36 pursuant to plaintiff invoice 83007 for the quarterly installment of defendant's continued use of Darktrace software. The defendant has failed to pay this invoice either in whole or in part as of the date below as recited in this complaint.

13. On May 6, 2024 plaintiff billed defendant \$32,356.36 pursuant to plaintiff invoice 83574 for the quarterly installment of defendant's continued use of Darktrace software. The defendant has failed to pay this invoice either in whole or in part as of the date below as recited in this complaint.

14. At no time with regard to any of the invoices referenced has defendant rejected their use or otherwise complained or claimed that one or several of the software products were not functioning or defective with regard to their intended services and outcomes

**AS AND FOR A FIRST CLAIM**  
**(Breach of Agreement/Contract)**

15. Plaintiff repeats and realleges paragraphs 1 through 14 herein.

16. The parties have engaged in an ongoing course of dealing regarding plaintiff licensing software to defendant and for other computer related services since on or about January 25, 2019 to at least December 2023. The defendant has agreed and agrees that once an invoice is provided to it, it must timely pay this invoice in order for the software license to remain in effect, which it has done on an ongoing basis, with the exception of the invoices referenced and complained of herein.

17. Pursuant to the emails forwarded defendant on December 21, 2023 by Nicholas Sidoti, the plaintiff also provided its "Terms and Conditions" regarding the licensing of the software sought by defendant. By return emails, defendant on December 21, 2023 twice agreed to these "Terms and Conditions", which Section 3.3 of the "Terms and Conditions" reads as follows:

**Past-due Invoices.** Past-due invoices are subject to a service charge of 1.5% per month on the unpaid balance. If you fail to make timely payment of any amount invoiced hereunder, we will have the right, in addition to any and all other rights and remedies available at law or in equity, to immediately revoke any or all credit extended, or to delay or cancel future deliveries. You are responsible to us for all reasonable attorney fees, court costs, and/or collection agency fees that we incur should you default on payment. You acknowledge that we retain full security interest in all products we sell to you until you render payment in full.

18. Having sought, received, used and exploited the software as recited in the invoices referenced herein, defendant has breached its agreement to pay for the use licenses stated in the invoices, with the total amount due for such uses being \$109,417.40. In addition to this stated amount, plaintiff seeks additional damages pursuant to the unambiguous terms of Section 3.3 of its Terms and Conditions as recited above, of 1.5% per month as a service charge on the each of the five invoices starting from the respective months they were provided, to and including the date that judgment will be entered.

19. Prior to filing suit, on September 5, 2024 plaintiff demanded that defendant to pay the \$109,417.40 pursuant to letter from counsel undersigned. Defendant failed to answer the letter or to make any payment regarding the amount claimed. In addition to the damages being sought above, plaintiff seeks its "reasonable attorney fees, [and] court costs" as are recited in the previously referenced "Terms and Conditions" as such fees and costs arise from this suit.

**AS AND FOR A SECOND CLAIM**  
**(Unjust Enrichment)**

20. Plaintiff repeats and realleges paragraphs 1 through 19 herein.

21. In the alternative, should the court determine that an express contractual relationship or course of dealing does not exist between the parties, plaintiff seeks judgment against defendant for unjust enrichment, for its use of the software items listed in the five invoices which have not been paid for to date, in the sum of \$109,417.40.

**AS AND FOR A THIRD CLAIM**  
**(Accounts Stated)**

22. Plaintiff repeats and realleges paragraphs 1 through 21 herein.

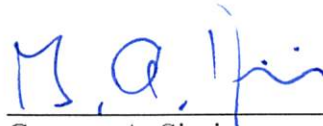
23. In the alternative, plaintiff forwarded defendant account statements with regard to the software licensed to it from the respective dates of each of the invoices listed herein. At no time has defendant rejected any of the invoices served upon it or otherwise complained that the sums being sought for the software licenses are incorrect or have been settled, in whole or in part. Plaintiff seeks judgment of \$109,417.40 based on accounts stated based on the defendant fully accepting both the use of the software products as represented on the invoices forwarded to it.

24. Plaintiff demands trial by jury for the claims recited herein.

**WHEREFORE**, plaintiff seeks damages in the sum of \$109,417.40 and the additional agreed to service charge of 1.5% per month on the amount stated in each of the invoices until the entry of judgment; plaintiff additionally seeks its court costs and reasonable attorney's fees as agreed to by defendant, together

with whatever other and further relief this Court deems just and proper as based on the facts and circumstances stated herein.

Dated: New York, NY  
September 24, 2024



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